

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSE HERNANDEZ,

Plaintiff,

vs.

Case No.: 2:12-cv-00369-GMN-CWH

INDYMAC BANK; QUALITY LOAN
SERVICE CORPORATION; INDYMAC
FEDERAL BANK, F.S.B.; ONEWEST
BANK, F.S.B.; DEUTSCHE BANK
NATIONAL TRUST COMPANY; DOES
I-X and ROE CORPORATION I-X,
inclusive,

Defendant.

ORDER

Pending before the Court are two motions filed by Plaintiff Jose Hernandez's counsel requesting an extension of the deadline in which to file a response to Defendant Quality Loan Service Corporation's Motion to Dismiss (ECF No. 7). (Pl.'s First Mot. to Enlarge Time to File Opp. to Def. Quality Loan Service Corp.'s Mot. to Dismiss, ECF No. 10; Pl.'s Second Mot. to Enlarge Time to File Opp. to Def. Quality Loan Service Corp.'s Mot. to Dismiss, ECF No. 17.)

I. BACKGROUND

Defendant Quality Loan Service Corp. filed a Motion to Dismiss on March 9, 2012. (ECF No. 7.) Any opposition by the Plaintiff was due March 26, 2012.

Plaintiff's counsel filed his first motion on March 26, 2012, requesting the additional time of one week (until April 2, 2012) to file an opposition "[d]ue to plaintiff not having the opportunity to review his opposition or his supporting affidavit before the expiration of the time to respond to defendant's motion." (First Mot. to Enlarge Time, 2:7-10, ECF No. 10.)

1 Plaintiff's counsel filed the second motion on April 2, 2012, claiming that Plaintiff
2 filed a petition for Chapter 13 bankruptcy protection on April 1, 2012, and attaching a
3 copy of the petition in Case No. 12-13884-mkn. (Second Mot. to Enlarge Time, ECF No.
4 17.) Plaintiff's counsel stated that "[p]ursuant to the bankruptcy filing, an automatic stay
5 is in place which stays the current action." (*Id.* at 2:5-6, 4:13-15.) Plaintiff's counsel then
6 requested that the Court enlarge the time to file the opposition "until the bankruptcy court
7 determines that the stay should no longer be in place." (*Id.* at 2:7-8.)

8 Plaintiff's counsel did not cite to any rule or court order in support of his
9 contention that pursuant to the bankruptcy filing an automatic stay is in place which stays
10 the current action. However, he did submit a signed affidavit in which he stated that "on
11 April 1, 2012, plaintiff filed a petition for Chapter 13 bankruptcy protection and, as a
12 result, there is now an automatic stay in place which stays the present action." (*Id.* at
13 2:27-28 – 3:1.)

14 **II. LEGAL STANDARD**

15 Federal Rule of Civil Procedure 6(b) provides for an extension of time:

16 **(1) In General.** When an act may or must be done within a specified time,
17 the court may, for good cause, extend the time: (A) with or without motion
18 or notice if the court acts, or if a request is made, before the original time or
19 its extension expires; or (B) on motion made after the time has expired if
20 the party failed to act because of excusable neglect.

21 Automatic stays pursuant to the filing of a bankruptcy petition are generally
22 governed by 11 U.S.C. § 362.

23 **III. DISCUSSION**

24 Plaintiff's counsel cites no authority for the proposition that the litigation in this
25 case is automatically stayed by the filing of Plaintiff's bankruptcy petition, and the Court
finds none. Therefore, the Court does not find that good cause exists, and Plaintiff's
second motion to enlarge time will be denied.

1 The Court generally grants motions to enlarge time when it is a first request, and
2 the Court finds that the interests of justice are best served by allowing Plaintiff to review
3 his opposition and supporting affidavit. Therefore, the Court finds that good cause exists
4 to grant the first motion. Since the deadline for that extension was April 2, 2012, before
5 the filing of this order, the Court additionally finds that good cause exists to extend the
6 deadline to seven days from the filing of this order.


7 **IV. CONCLUSION**

8 **IT IS HEREBY ORDERED** that Plaintiff's First Motion to Enlarge Time to File
9 Opposition (ECF No. 10) is **GRANTED**.

10 **IT IS FURTHER ORDERED** that Plaintiff's Second Motion to Enlarge Time to
11 File Opposition (ECF No. 17) is **DENIED**.

12 **IT IS FURTHER ORDERED** that Plaintiff is given leave to file his opposition to
13 Defendant Quality Loan Service Corporation's Motion to Dismiss (ECF No. 7) within
14 seven (7) days of this order.

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16 DATED this 4 day of April, 2012.

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20 Gloria M. Navarro
21 United States District Judge
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